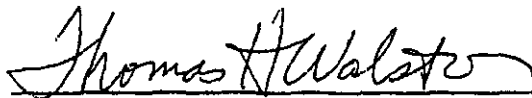


VII. Ordering Paragraphs

1. ASAP Paging, Inc.'s complaint against CenturyTel of San Marcos, Inc. is DENIED.
2. Order No. 3 entered in this proceeding, which prohibits CenturyTel from requiring 1+ or 0+ dialing and from charging toll to its San Marcos when they call the ASAP Lockhart 512-384 NXX, is SET ASIDE.
3. CenturyTel is authorized to require 1+ or 0+ dialing and to charge intraLATA toll in accordance with CenturyTel's tariff for calls from CenturyTel's San Marcos customers to ASAP's 512-265, 512-384, and 512-580-NXXs
4. ASAP is ORDERED to file for registration with the Commission under PURA § 52.103 and applicable Commission Substantive Rules for the wire-line services that ASAP provides to Internet service providers. Alternatively, ASAP shall cease such services.
5. All motions, requests for specific findings of fact or conclusions of law, and any other requests for general or specific relief, not expressly granted, are denied for want of merit.

Signed at Austin, Texas, on April 23, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS



THOMAS H. WALSTON
ADMINISTRATIVE LAW JUDGE

ASAP Paging, Inc. Petition for Preemption of TPUC

Exhibit 6: ASAP's Motion for Rehearing

ASAP PAGING, INC.
October 30, 2003

SOAH DOCKET NO. 473-02-2503
PUC DOCKET NO. 25673

COMPLAINT, REQUEST FOR	§	
EXPEDITED RULING, REQUEST	§	BEFORE THE
FOR INTERIM RULING, AND	§	
REQUEST FOR EMERGENCY	§	PUBLIC UTILITY COMMISSION
ACTIO OF ASAP PAGING, INC.	§	
AGAINST CENTURYTEL OF	§	OF TEXAS
SAN MARCOS, INC.	§	

ASAP PAGING INC. MOTION FOR REHEARING

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**SOAH DOCKET NO. 473-02-2503
PUC DOCKET NO. 25673**

**COMPLAINT, REQUEST FOR
EXPEDITED RULING, REQUEST
FOR INTERIM RULING, AND
REQUEST FOR EMERGENCY
ACTION OF ASAP PAGING, INC.
AGAINST CENTURYTEL OF
SAN MARCOS, INC.**

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§

**BEFORE THE

PUBLIC UTILITY COMMISSION

OF TEXAS**

ASAP PAGING INC. MOTION FOR REHEARING

NOW COMES ASAP PAGING, INC. ("ASAP") and files its Motion for Rehearing of the Commission's Order in the above-styled and numbered case ("Order").¹

Introduction

The Commission must reevaluate, rehear and reconsider its Order. The decision conflicts with the rules that apply to wireline-wireless interconnection and traffic exchange. It will irreparably damage the competitive status of all CMRS carriers, including cell and PCS providers. The following quotations from two recent FCC decisions completely undercut the Commission's rationale to its resolution of the call rating issues:

Because wireless service is spectrum-based and mobile in nature, wireless carriers do not utilize or depend on the wireline rate center structure to provide service: wireless licensing and service areas are typically much larger than wireline rate center boundaries, and wireless carriers typically charge their subscribers based on minutes of use rather than location or distance.²

and

First, the defining aspect of mobile telephony is, of course, mobility... Second, wireless carriers have considerable discretion in how they assign telephone numbers across the rate centers in their operating areas. In other words, a mobile telephone subscriber can be assigned a phone number associated with a rate center that is a significant distance away from the subscriber's place of residence... Once the NPA-NXX (i.e., 212-449) is assigned to the wireless carrier, the carrier may select any one of its NPA-NXXs when allocating that number to a particular subscriber. Therefore, with regard to wireless, the subscriber's physical location is not necessarily a requirement in

¹ The order is dated October 9, 2003, but was file-stamped on October 10. ASAP received a copy of the Order by U S Mail on October 14th. Since this Motion for Rehearing is submitted on October 30, 2003 it is timely filed.

² Memorandum Opinion and Order, *In the Matter of Telephone Number Portability – Carrier Requests for Clarification of Wireless-Wireless Porting Issues*, CC Docket No. 95-116, FCC 03-237 ¶ 22 (Rel. Oct. 7, 2003).

determining the phone number assignment – which is very different from how wireline numbers are assigned.³

The Commission's holding that ASAP is "the called party" or the "called customer"⁴ also stands in stark contrast to clear federal authority:

"RCCs are not end users except to the extent that they use exchange facilities for administrative purposes." "[RCCs] are not and should not be treated as interexchange carriers under Part 69."⁵

The Commission just plain got it wrong as a matter of law.

The policy is way wrong too. ASAP respectfully suggests that the PUC is not here to protect incumbents from their own customers or competitors; it is supposed to regulate in the public interest, not the utilities' interest. It is difficult to imagine how allowing CenturyTel to assess toll charges on a call initiated by a CenturyTel end use customer to any carrier's Kyle, Fentress or Lockhart number is in the public interest. One must ignore the obvious to reach any conclusion other than that the Commission has allowed CenturyTel to impose toll on its customers merely because they are calling a number assigned to a non-ILEC. These San Marcos residents are members of the public – the very folks the PUC was established to protect. And the calls in issue are important: people calling doctors and nurses. Doctors and nurses trying to contact people on an organ transplant list. People trying to access the Internet. These are human beings who are trying to communicate; people who do not deserve to pay a toll merely because the intended recipient has chosen to use a competitor for PSTN access. This Commission is punishing citizens who have reasonably made a competitive choice. No rationalization; no excuse; no amount of prevarication will ultimately hide this obvious conclusion.

If this order stands the Commission will have to allow, indeed require, CenturyTel to impose toll charges on Verizon's customers with open-end FX in Kyle and Fentress, and SBC's customers with open-end FX in Lockhart, but whose "premise" is not physically located in the ELCS area. But we all know that is not going to happen. The Order allows unreasonable and unlawful discrimination and is arbitrary and capricious.

You can say "the call really doesn't go there" until you run out of breath. Some of the calls do go there; the Commission simply "deemed" all calls as going to ASAP's switch rather than the location

³ Eighth Report, *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 02-379, FCC 03-150, ¶ 62 and n. 227.

⁴ FOF No. 20A; Conclusion of Law No. 29. *See also*, Order Denying Appeal, PUC Docket 27802, Petition for Expanded Local Calling Service from the City of Carizzo Springs to the Exchanges of Batesville, Eagle Pass, La Pryor, and Uvalde, p. 1.

⁵ *MTS/WATS Market Structure*, CC Docket No. 78-72, 97 FCC2d 834, 882 (1984) ("Access Charge Second Reconsideration Order").

the Order itself wrongly says is important. Any calls that do not "go there" have valid reasons that do not justify a toll. Mobile service is mobile, but that has never before led to toll charges. And as we all know, the FCC has ruled that a call to an ISP is a call to "the Internet" and the ISP is merely an intermediate point of switching. The "Internet" is incorporeal and it has no "premises." But where these calls "go" is not relevant at all. The called party's actual physical location simply has no relevance to retail rating (as opposed to carrier compensation) *and it never has*.

The Commission should grant rehearing, and correct the multiple errors of law and policy in the Order.

A. Background.

ASAP is a small Texas family-owned facility-based carrier that initiated operations in 1989. ASAP provides CMRS paging services throughout central and south Texas. Central Texas customers receive service via a Class 5 switch/paging terminal. ASAP connects to the wired world using "Type 2" interconnection arrangement through SWBT's Austin Greenwood and Homestead tandems.⁶ Since it is a CMRS carrier, ASAP is entitled to and has received NANPA-issued NXXs in several central Texas rate centers where ASAP has FCC-issued spectrum authorizations and wireless coverage (including physical plant). At the time of hearing, each of these NXXs "routed" to ASAP's Austin switch for termination. The subset of ASAP's Austin LATA NXXs in issue in this case are those associated with the Kyle, Fentress and Lockhart rate centers, and listed as such in the Local Exchange Routing Guide ("LERG") and Business Integrated Routing and Rating Database System ("BIRRDs").⁷

ASAP operates 20 transmitters to provide paging service throughout central and south Texas.⁸ These transmitters are part of ASAP's extensive physical network that provide "coverage" in – among other places – Kyle, Fentress, San Marcos⁹ and Lockhart.¹⁰ ASAP has paging customers that are

⁶ FOF No. 12. CMRS carriers that interconnect via Type 2 have their own Class 5 switch that subtends a LATA tandem. The CMRS carrier directly obtains NXXs and associates them with various rate centers. Those numbers reside in the CMRS switch. Connection to the tandem provides access to all other end offices that subtend that tandem, and all other tandems that are connected to that tandem. With Type 1 interconnection, the CMRS provider uses numbers that reside in an ILEC end office switch and obtains local access to all numbers that are local to the ILEC end office switch, including ELCS and mandatory EAS arrangements. See, e.g., *In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services*, ¶ 105 FCC 94-145, CC Docket No. 94-54, RM-8012, 9 FCC Rcd 5408, 1994 FCC LEXIS 3181 (Rel. Jul. 1, 1994). ("CMRS Equal Access Obligations").

⁷ CenturyTel is the only ILEC with whom ASAP has had any difficulty. Both SBC and Verizon route calls to ASAP's NXXs in ELCS areas, and both retail rate calls as local.

⁸ FOF No. 17 (ASAP notes that this FOF incorrectly refers to "paging terminals" rather than "transmitters" in those areas)

⁹ This is not just an "ELCS" (i.e., San Marcos to Kyle, Fentress or Lockhart) case. ASAP has San Marcos paging and ISP customers and needs its San Marcos customers to be reachable on a local calling basis by callers in San Marcos. ASAP can conserve NXXs by using its Kyle, Fentress or Lockhart numbers to provide service to ASAP customers who have a specific relationship to San Marcos. ASAP at one point had a San Marcos NXX but relinquished that NXX to

physically located in, or have a specific need to be reachable on a "local" basis from, wireline end users in each of those communities. ASAP has facilities in (or near enough to "cover") each of those communities. Even though it does not make any difference, ASAP does have many customers that are physically present in those communities, at least part of the time, and calls from San Marcos to those customers do both originate and complete within the ELCS area.¹¹

ASAP's switch/paging terminal connects to its transmitters over the Internet. When a call comes in from the PSTN, it hits the switch and, after processing by the switch/terminal,¹² the information that needs to reach a particular pager is routed over an Internet connection to a satellite uplink in Chicago. The satellite transponder then broadcasts to ASAP's transmitters, each of which "fire" simultaneously in an attempt to reach the paging unit in issue and deliver the information. ASAP's paging customers can also receive pages launched from the Internet. The Internet and connections to ISPs are essential to ASAP's core paging operations.

ASAP also provides connections to five ISPs. Each ISP uses one number in ASAP's 10,000 number NXX blocks in issue. ASAP processes the call and hands it off to the ISP over a dedicated DS1 connection. The ISP takes it from there. One of the ISPs is San Marcos Internet. San Marcos Internet's "premise" (as defined in PUC Subst. R. 26.5(156)) is physically located in San Marcos.¹³

NANPA. This relinquishment contributed to the Commission's efforts to avoid NXX exhaust within the 512 NPA. Int. Hng. Tr. p. 46; ASAP Exh. 44 (Gaetjen Reb.) p. 10. ASAP is now suffering as a result of its contribution to the PUC's number conservation efforts.

¹⁰ FOF 18 contains the revelation that "there is no landline connection between San Marcos and ASAP's Lockhart transmitter. Instead, all broadcast pages are directed to this transmitter from a satellite to a satellite dish located at the transmitter." But clearly, these are facilities in the area that provide service in the area to customers in the area; they are not wireline facilities because ASAP is a wireless carrier. The Commission is punishing ASAP for being wireless. That is arbitrary and capricious.

¹¹ At the time of the hearing, for example, ASAP had 83 "paging" customers using an ASAP Lockhart number. Customers like doctors and electric utility personnel that use pagers in their important work. Customers like medical patients on organ transfer lists that are waiting for "the call" and to whom ASAP provides free service. ASAP Exh. 9 (Gaetjen Direct) p. 2. Contrast this to the 5 ISPs that used a Lockhart number. While it is true that the preponderance of messages and minutes were associated with calls to ASAP's ISPs, the fact is that the ISPs only use 6% of ASAP's "in use" Lockhart numbers. Cf., FOF No. 41.

¹² With a paging call, the calling party can leave a call back number or a voice message. If the calling party chooses to leave a call back number, then the system records that number and sends a signal to alert the paging unit with the number to be called. If the calling party leaves a voice message, the system sends a signal to alert the paging unit that a message is waiting. The paging customer then dials in to the system – by dialing the paging customer's number – and retrieves the message. ASAP also supports Internet-based paging and a number of other "information" services such as text-based alerting or news and information. ASAP Exh. 44 (Gaetjen Reb.) pp. 14-15. The Internet is an integral part of ASAP's service provision. The Order wrongly differentiates ASAP's use of spectrum from the Internet that supports it and the ISPs that are inexorably linked to the way that ASAP does business.

¹³ When a CenturyTel San Marcos user dials a number used by San Marcos Internet's, the call is handed off from ASAP to San Marcos Internet and San Marcos Internet hauls the call to San Marcos. San Marcos Internet performs authentication in San Marcos. The San Marcos Internet customers retrieve email from an email server in San Marcos (regardless of wherever in the world the email was originated). San Marcos Internet's Domain Name Server is in San Marcos. If the NXX is not important and the location of the ISP is determinative, then San Marcos Internet was not in

For this reason Conclusion of Law No. 30 is incorrect.

CenturyTel voluntarily began to route calls to ASAP's Lockhart NXX on a "local" basis in October of 2001. This continued until April 1, 2002, at which point CenturyTel unilaterally changed the translations in its San Marcos switch so that calls to ASAP's Lockhart NXX could no longer be dialed as local. After the retranslation, CenturyTel end users who attempted to dial an ASAP Lockhart NXX were required to dial 1+, and if the 1+ call was made, the CenturyTel end user was assessed intraLATA toll charges.¹⁴

B. Summary of Argument.

The Order acts as if it resolved only two issues in this case, but it collides with, while glossing over, many subsidiary federal law issues. The Order finds that ASAP must register and calls to ASAP's Kyle, Fentress and Lockhart NXXs are not "local" to San Marcos. Both conclusions are wrong and must be reversed.

There are four basic problems with the Order. First, the Order wrongly imposes wireline concepts on wireless, mobile service and by doing so it deprives ASAP, ASAP's customers and CenturyTel's customers that call one of ASAP's numbers several rights guaranteed by federal law. Second, the Order confuses the essential distinction between retail rating and intercarrier compensation concerning calls from a wireline customer to a customer that is arguably not physically located within the same mandatory local calling area. Third, the Order misconstrues the character of "ELCS" and the duties of ILECs servicing an "ELCS" area: ELCS is basic local service and is not a special arrangement reserved to ILEC customers that call other ILEC customers. Fourth, the Order errs in its conclusions concerning state regulatory authority over the service that ASAP provides to its ISP customers.

The Order cannot be reconciled with prevailing law. ELCS is merely a procedural method to expand a previously existing local calling scope for basic service to wireline customers. Once the scope is expanded, then the entire area becomes a "single local calling area" for service "within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange."¹⁵

Austin but is instead in San Marcos ASAP Exh 43 (Goldstein Reb.) p. 4; ASAP Exh. 44 (Gaetjen Reb.) pp. 913 Obviously, San Marcos is "local" to San Marcos The Order wrongly "deems" San Marcos Internet to not be in San Marcos

¹⁴ FOF No. 42. The retranslation occurred in the dark of night on April 1, without notice. In fact, the retranslation was performed the day before ASAP received CenturyTel's notice that it intended to begin imposing toll thirty days later, or on May 3 unless the parties resolved their dispute. ASAP Exh. 44 (Gaetjen Reb.) p. 18, lines 15-20.

¹⁵ See 47 USC § 153(47) [definition of "telephone exchange service"].

After expansion of a local calling area, all the regular rules concerning competition – for both CLECs and CMRS – must be applied. Calls to an NXX associated with the same mandatory local calling area (including an “ELCS” area) must be retail rated as local.¹⁶ “ELCS” is not an interexchange service. It is basic local service; every basic service customer receives the expanded calling scope and is required to pay the mandatory flat monthly surcharge.¹⁷ An ILEC end user cannot opt out of ELCS.

Not only is the Order inconsistent with the law and both state and federal precedent, it adopts a clearly improper policy approach. ILECs will now be able to ignore the rate center assignments of NXXs held by competitive carriers and obtained pursuant to federal authorizations. The decision to “deem” ASAP’s Kyle, Fentress and Lockhart numbers to “really” be Austin numbers is wholly contrary to ASAP’s federal right to numbering resources, over which the FCC has exclusive jurisdiction.¹⁸ ILECs will be able to retranslate their switches for entire NXX blocks in the dark of night, without notice. ILECs, not the PUC or FCC, will have the unilateral right to determine whether a competitive carrier is “properly using” a numbering resource. This is not just a “paging” or even a CMRS issue. Some of the conclusions in the Order equally apply to **all** carriers’ (ILEC, CLEC and CMRS) NXXs.

Competitive carrier networks are considerably different from ILEC networks in that a single Class 5 switch will hold NXXs that are rate centered in several different local calling areas.¹⁹ But under the Order, calls from ILEC end users to competitive carrier customers will be toll unless the competitive carrier’s switch happens to be within the same mandatory local calling area (including ELCS) as the calling ILEC customer.²⁰ The automated BIRRDs call rating system based on NXXs and rate centers that is uniformly used by the entire industry will no longer be the authoritative source for determining call rating.²¹

¹⁶ There are carrier compensation issues that arise when the called party is not physically located within the calling party’s local calling area. A retail rated local call may – on occasion – not be subject to § 251(b)(5) reciprocal compensation. This case revolves entirely around retail rating to a wireline customer calling a CMRS number. The Order confuses retail rating with the intercarrier compensation principles the Order correctly rules are not in issue in this case

¹⁷ *In the Matter of Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations* FCC 97-244, CC Docket No. 96-159, File Nos. NDS-LM-97-2 through NDS-LM-97-25, Memorandum Opinion and Order, note 4 and ¶ 14 (Jul. 1997) (“*ELCS LATA Modifications*”) [Texas ELCS is basic local service] The fact that ELCS has a separately stated surcharge does not make it “un” basic. Mandatory EAS also has a separately stated surcharge. The ELCS and mandatory EAS charges are part of the basic bill for local service. This Commission has consistently ruled that ELCS and mandatory EAS are both telephone exchange service.

¹⁸ See 47 USC § 251(e)(1); 47 C.F.R. § 52.15

¹⁹ See ASAP Exh. 10 (Goldstein Dir.) pp. 6-7; ASAP Exh. 43 (Goldstein Reb.) pp. 23-25.

²⁰ ASAP predicts that CenturyTel will still not retail rate such calls, despite what the Order says.

²¹ See CO Code Guidelines, p. 5 [Attachment WR-3 to CenturyTel Exh. 3]

All of this will occur merely so that CenturyTel can exercise some perceived entitlement to abuse its own end users by imposing additional costs when those users have the temerity to call someone who uses a disfavored competitor. It is uncontested that when CenturyTel routes a call to one of ASAP's numbers, CenturyTel incurs exactly the same costs as it does when it routes an "ELCS" call to SWBT or Verizon. CenturyTel does not have any "out of San Marcos" transport responsibility.²²

This case is entirely about CenturyTel's perceived entitlement to be paid either toll or access whenever one of its users calls a competitor's customer. CenturyTel witness Smith finally confessed that this case was not about cost recovery, but rather perceived revenue entitlement:

2 Q What I'm trying to say is the
3 importance of separate trunk groups and separate
4 terminations is that there may be separate
5 appearances on a switch. They may be on one
6 part of a switch as opposed to another part of a
7 switch. But if they all ride on the same fibers
8 and all go to the same place, and they go in the
9 same group of fibers, as it pertains to
10 transport, the cost is going to be the same,
11 isn't it?

12 A The cost from one point to another,
13 but the recovery is different. (Emphasis added)²³

This discriminatory and anticompetitive result cannot be allowed. It is unjust, unreasonable, contrary to public policy and directly violates both state and federal law.

The Order cannot stand.

Rehearing No. 1: The Order incorrectly categorizes ELCS. ELCS is basic telephone exchange service once it is created under state law.

Rehearing No. 2: The Order incorrectly holds that CenturyTel did not violate the orders establishing ELCS between San Marcos Kyle, Fentress and Lockhart, respectively.

Order pages 5-8; Finding of Fact Nos. 20, 20A, 33, 36-39, 43-51; Conclusions of Law Nos. 18-39; Ordering Paragraphs 1-3, 5.

(ASAP will discuss Rehearing Nos. 1 and 2 together.)

The Order denominates ELCS as a "special arrangement." In other words, the Order treats ELCS like optional EAS. The Order also effectively prevents any competitive carrier from "participating" in the retail rating aspect of ELCS unless both the calling and called party are physically within (or deemed to be within) the ELCS area at the time of an individual call. These two findings are erroneous. If this characterization is accepted, then future ELCS requests that require SBC

²² FOF Nos. 49, 50; Int. Hng. p. 206, Hng. Tr pp. 473, 487-8, 494-5, 504-5, 510, 536-7; ASAP Exh. 43 (Goldstein Reb.) pp. 11, 25, 28.

²³ Hng. Tr p. 510 (emphasis added). See also ASAP Exh. 43 (Goldstein Reb.) p. 10, 1, 14-15.

to seek a limited modification of LATA boundaries will likely not be approved by the FCC, since the FCC has previously characterized ELCS as basic local service. The fact that competitive carriers will be precluded from "participating" in ELCS areas on the same terms as the incumbents will probably also be quite troubling to the FCC.

The logic of the Order is wrong. First, it incorrectly uses the statutory criteria for the initial expansion of the calling scope to develop rules that apply to specific calls after the area is expanded.²⁴ After the area is expanded, then all the normal rules of retail rating must apply. Second, the Order confuses the principles and rules of retail rating with those that apply to carrier compensation. Retail rating (as opposed to intercarrier compensation) does not depend and has never depended on the physical location of the called party at the time of the call. While the physical location of the calling and called parties has some relevance to intercarrier compensation, it does not affect retail rating in any way. The industry uses the rate center assignments of the originating and terminating NXXs – not physical location – to determine retail rating. The FCC²⁵ and the North American Numbering Council²⁶ both recognize this to be so. The Order, however, allows CenturyTel to ignore ASAP's rate center assignments; indeed, the Order functionally reassigns ASAP's Kyle, Fentress and Lockhart numbers to the Austin rate center. This violates ASAP's federal rights, since ASAP was entitled to obtain NXXs in the Kyle, Fentress and Lockhart NXXs, and ASAP did obtain those NXXs pursuant to federal law.

²⁴ See Order at p. 6, FOF No. 19.

²⁵ Notice of Proposed Rulemaking, *In the Matter of Numbering Resource Optimization; Connecticut Department of Public Utility Control Petition for Rulemaking to Amend the Commission's Rule Prohibiting Technology-Specific or Service-Specific Area Code Overlays, Massachusetts Department of Telecommunications and Energy Petition for Waiver to Implement a Technology-Specific Overlay in the 508, 617, 781, and 978 Area Codes; California Public Utilities Commission and the People of the State of California Petition for Waiver to Implement a Technology-Specific or Service-Specific Area Code*, FCC 99-122, CC Docket No. 99-200; RM No. 9258, NSD File No. L-99-17; NSD File No. L-99-36, 14 FCC Rcd 10322, 1999 FCC LEXIS 2451, ¶ 112, n. 174 (Rel. Jun. 2, 1999) ("NRO NPRM"). See also Int. Hng. Tr. p. 199.

²⁶ North American Numbering Council LNPA Working Group Report on Wireless Wireline Integration, p. 33 May 8, 1998 (NANC Report to FCC) available at <http://www.fcc.gov/wcb/tapd/Nanc/rptnancr.doc>.

2.3 Wireless NXX Assignments

NXX codes that are assigned to wireless carriers are associated to a specific wireline rate center and are communicated via the LERG. These are assigned to wireline rate centers in order to accomplish land to mobile rating. However, once NPA-NXXs are assigned to a wireless carrier, wireless carriers may select any one of their NPA-NXXs when allocating numbers to a subscriber. The WSP may select a particular NPA-NXX value based on customer desires of calling areas for land to mobile calls, mobile to land calls, or a combination of both. Alternatively, a wireless carrier may choose to select an NPA-NXX value that is physically closest to the subscriber billing address. There are no state or federal requirements to associate an NPA-NXX for a new subscriber based on their residence, billing, or other location. (emphasis added)

A. ELCS is “basic local service” since it expands the mandatory calling scope. Once ELCS is approved, calls to users – including ISPs – are “local” for retail rating purposes. This applies whether the called party is served by an ILEC (such as CenturyTel) or a competitive carrier.

This Commission has, until now, consistently treated mandatory EAS and ELCS as the telephone exchange service that it quite clearly is.²⁷ An ELCS call is a “local” call under PUC Subst. R. 26.5(117) and a “local message” under 26.5(121). In federal terms, ELCS is service within a “connected system of telephone exchanges.”²⁸ The name alone (Expanded Local Calling Service) makes it clear that ELCS is local. ELCS is not like optional EAS or FX and FX-like services, which are “comparable to, without becoming” local.²⁹

The FCC has fairly routinely approved petitions by RBOCs for “limited modifications” of LATA boundaries in order to facilitate ELCS and mandatory EAS. The federal commission considers ELCS and EAS to be nothing more than action by the state to expand the basic service local calling area so long as the expansion is mandatory and not optional.³⁰ The Order’s characterization of ELCS as a “special arrangement”³¹ instead of a simple expansion of the mandatory basic service calling area is simply incorrect as a matter of state law; it is also absolutely inconsistent with the way ELCS is treated for purposes of federal law.

B. The Order wrongly relies on the procedural and statutory criteria for obtaining an expansion of the local calling area to develop rules that apply to specific calls after the area is expanded. The result is anticompetitive and will contribute to number exhaust.

Once the mandatory calling scope is expanded through ELCS or mandatory EAS, then all of the standard rules pertaining to basic service provided by incumbents must apply. They must

²⁷ See *Petition of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops Agreement Between MFS Communications Company, Inc and Southwestern Bell Telephone Company*, Docket No. 16189, et al, Award at ¶ 58 (Nov. 8, 1996) (“First Mega-Arbitration Award”); *Complaint and Request for Expedited Ruling of Time Warner Communications*, Docket No. 18082, Order (Feb. 27, 1998); Project No. 16251, Order No. 55, Attachment 12 at ¶ 11. See also *Evaluation of the Public Utility Commission of Texas, In the Matter of Application of SBC Communications Inc., and Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. D/B/A/ Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas Pursuant to Section 271 of the Telecommunications Act of 1996*, CC Docket No. 00-4, at 88 (Jan. 31, 2000); Project No. 16251, Final Staff Report on Collaborative Process at 103-104 (Nov. 18, 1998); *Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996*, Docket No. 21982 Revised Arbitration Award (Aug. 31, 2000); Final Order (March 5, 2001).

²⁸ See Federal Telecommunications Act of 1996 § 153(47).

²⁹ Consolidated Complaints and Requests For Post-Interconnection Dispute Resolution Regarding Inter-Carrier Compensation for “FX-Type” Traffic Against Southwestern Bell Telephone Company, Docket No. 24015, Revised Award pp. 35-36 (Aug. 2002) (“FX Docket”).

³⁰ *ELCS LATA Modifications, supra* That case involved SBC in Texas. The FCC characterized ELCS, including the Texas version of ELCS, as “traditional local service” ¶¶ 14, 18. The FCC, however, refused to allow the modifications unless the service was mandatory. It had to be flat-rate and non-optional. ¶¶ 14, 20-21.

³¹ Order p. 6.

interconnect; they must route calls; and, most important, they may not impose retail toll charges on their end users when those users call a customer of a competitive carrier with an NXX that is associated with the area, as expanded. With specific reference to this case, CenturyTel must retail rate all calls to any carrier's Kyle, Fentress and Lockhart NXXs just as it rates calls to a competitive carrier's San Marcos NXX.³² Any other result will further contribute to number exhaust, since competitive carriers will need to obtain an NXX in each of the pre-ELCS exchanges. On the other hand, if ELCS is treated like the basic service that it is, then carriers will be able to relinquish some now-redundant numbers, given that they will have access to the entire area with any number associated with any rate center in the ELCS area.

C. The Order confuses retail rating and carrier compensation rules. Retail rating (as opposed to intercarrier compensation) does not depend on the physical location of the called party at the time of the call.

This Commission has consistently required carriers to honor the rate center assignments of other carriers for retail rating purposes. While there are intercarrier compensation implications, the physical location of the calling and called parties has never determined the retail rating of an ILEC's customer call to another customer – whether served by the ILEC, another ILEC, a CLEC or a CMRS carrier. This rule has been expressly applied to ELCS and mandatory EAS.

Customers have been able to secure a “local presence” in a distant exchange for many years.³³ The ILECs themselves have provided Foreign Exchange (FX) and FX-like services for decades and those services respect ELCS and mandatory EAS boundaries at the open end. Competitive carriers also offer such products – to human beings and to ISPs. The physical location of a CMRS customer has never determined retail rating of calls to the CMRS number.³⁴ If the ILEC has to transport a call outside an exchange boundary to deliver it to the competitive carrier (CLEC or CMRS) then the competitive carrier may sometimes be required to compensate the ILEC for the cost of transport.³⁵

³² Assume that ASAP sought and obtained a return of the San Marcos NXX that it voluntarily relinquished. Would the result of this case change in terms of retail rating for calls from a San Marcos user to an ASAP customer that had used a number in the San Marcos NXX? What if ASAP placed a switch in Kyle to serve its Kyle NXXs? CenturyTel – if pressed – will say no

³³ See, e.g., *FX Docket*, *supra* p. 21. Until this case the Commission had no problem with a carrier providing a number to a customer who may not be physically present in the rate center, so long as the intercarrier compensation method is bill and keep. Indeed, the Commission tried very hard to preserve competitors' ability to provide Virtual NXX or FX-like services to customers. An essential part of Virtual NXX/FX is retail rating of calls to the Virtual NXX/FX-like customer.

³⁴ ASAP will address CMRS call rating and NXX use below.

³⁵ Memorandum Opinion and Order, *TSR Wireless, LLC, et al., v. U.S. West Communications, Inc., et al.*, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, FCC 00-194 (Rel. June 21, 2000), *aff'd* *Qwest Corp. v. FCC*, 252 F.3d 462, 2001 U.S. App. LEXIS 13389 (D.C. Cir. 2001) (“*TSR*”); *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, File No. EB-00-MD-017, Memorandum Opinion and Order, DA 02-250 (Rel. Feb. 4, 2002); *aff'd* Order on Review, FCC 02-220 (Rel. Jul. 25, 2002) (“*Mountain Order on Review*”); PUC Docket No. 21982, Revised Arbitration

Retail rating, however, is completely controlled by the rate center assignments of the two NXXs and not the physical location of the called party. Any other result will lead to chaos and will absolutely harm the public interest.

This Commission directly addressed this issue in the Docket 24015, the "FX Docket." The Revised Award states several times that calls between NXXs associated with the same mandatory local calling area are retail rated as local, even if the calling or called party is not physically located within the mandatory local calling area.³⁶

As to the physical network, SWBT explained that when a carrier begins service of new telephone numbers, it publishes the new prefix to other carriers in the Local Exchange Routing Guide (LERG) in a process known as "opening a code in the LERG." SWBT testified that when the carrier opens a code, it will publish the code with 1) a "rate center" designation and 2) a switch designation. SWBT indicated that the rate center designation identifies the code's geographic location so that another carrier may classify the traffic as local or toll (long distance); the switch designation determines where to physically route calls that are dialed with that prefix.³⁷

SWBT contended that NPA/NXX assignment is important only from a retail (carrier to end user) but not from a wholesale (carrier to carrier) perspective. Ms. Butcher explained that calls made to the NPA-NXXs within the same rate center are local calls and calls made to NPA-NXXs in other rate centers are toll calls.³⁸

*From the perspective of FX customers, ILEC-provided FX service and CLEC-provided FX-type service serve the same intended purpose. The end user in the foreign exchange is able to avoid toll calls to the FX customer and instead to place local calls to the FX customer physically located in a different exchange. ... To be sure, these FX arrangements provide FX customers with exchange service within a Commission-prescribed mandatory local calling area even though the FX customer physically resides outside of said mandatory local calling area.*³⁹

..As to the analogies with other services, FX-type service does not in and of itself facilitate the provisioning of toll calls beyond the affected exchange service areas (i.e., the exchange service area where the FX customer is physically located and exchange service area where the FX customers receives dial tone and exchange service). FGA is specifically designed to provide a calling party with a connection to an interexchange carrier for the express purpose of completing toll calls via the use of a second dial tone

Award at fn 153. These cases address transport cost responsibility in the context of intercarrier compensation. None in any way allow the ILEC to impose toll on calls between NXXs that are rate centered in the same mandatory calling scope.

³⁶ The Commission then held that "bill and keep" would apply for reciprocal compensation purposes. Although this case does not involve reciprocal compensation, ASAP has consistently indicated that it prefers bill and keep, even though ASAP is entitled to recover reciprocal compensation from CenturyTel for much – if not all – of the "paging" traffic in issue

³⁷ FX Docket Revised Award, p. 21.

³⁸ FX Docket Revised Award, p. 27.

³⁹ FX Docket Revised Award, p. 30-31 (italics in original).

*and an access code. In contrast, FX service provides a local connection between the calling party and the called party; there is no second dial tone, no access code, and no interexchange carrier involved with such calls. An end-use customer can reach an FX customer without incurring a toll charge only if the end-use customer's phone number is within the same mandatory local calling area as the FX customer's phone number assigned by virtue of the FX arrangement.*⁴⁰

*From the perspective of the end user located in the foreign exchange, the FX customer appears to be "local" and all calls made to that customer are treated as local. While FX service has traditionally been offered by SWBT for many decades, [footnote omitted] the evidence in the record indicates that the competitive market for the service is in its infancy.*⁴¹

FOF No. 35 observes that "ASAP assigns NXXs without regard to whether the customer is physically located within the exchange to which the NXX is associated."⁴² The Order on page 6 indicates that calls must have a geographic correlation to the ELCS area in order to qualify for "ELCS treatment." The Commission must take off its wireline blinders. In the CMRS world, there is not and never was any necessary correlation of the CMRS customer's physical location to the rate center assignment of the customer's number. Retail rating of wireline to wireless calls has always been determined by the two NXXs; it does not matter if the wireless customer is on the moon at the time of the call. A call from rate center A to a wireless NXX associated with a rate center that is "local" to rate center A, is retail rated as a local call and is not long distance. This has always been the case, and it is still the law. Wireless carriers secure NXXs for only one purpose: to obtain local retail rating for wireline-wireless calls from the rate center the carrier the NXX is associated. The Order prevents ASAP from arranging for local calling from any area other than where it has a switch. That is simply wrong.

The Order also ignores the fact that the ILECs have been providing FX service for many years. SBC and Verizon both provide both FX and FX-like service. If the Order conclusions are accepted, then calls from a CenturyTel San Marcos end user to a number used by a customer using one of SBC's FX or FX-like services that has a Lockhart number, or a Verizon FX or FX-like service with a Kyle or Fentress number, are now subject to toll. Indeed, they must be subject to toll or else CenturyTel will be unlawfully discriminating between ILEC services and non-ILEC services based purely on the identity

⁴⁰ FX Docket Revised Award, p. 36 (italics in original)

⁴¹ FX Docket Revised Award, p. 49 (italics in original)

⁴² The significance of this finding is null, given that this is how all wireless carriers dole out numbers. The focus on it demonstrates the Commission's wireline-centric perspective. If, however, CMRS carriers must change their ways in order to maintain retail local call rating, ASAP suggests that this Commission should consider a rulemaking, since what it is announcing is a substantive change in the rules.

of the customer's carrier. The Commission has found that ILEC and CLEC FX-like services compete with each other. ILECs cannot be allowed to discriminate in favor of other ILECs' offerings and against competitive carrier offerings. The Order completely fails to consider ILEC FX offerings, even though there was testimony on this point.⁴³

CenturyTel's presentation blurred the important differences between carrier compensation issues and retail rating principles. Unfortunately, the Commission fell victim to CenturyTel's sleight of hand.⁴⁴ ELCS must be treated like the basic service that it is. While the location of calling and called parties may have some relevance for intercarrier compensation purposes, the potential physical presence of a customer outside the mandatory calling area has always been irrelevant to retail rating.

Rehearing No. 3: The Order violates ASAP's rights to interconnection and numbering resources and wrongly determines ASAP's rights based on a relationship to wireline network components.

Order pages 1-3; Findings of Fact Nos. 12-51A; Conclusions of Law Nos. 18-39; Ordering Paragraphs 1-3, 5.

A. CMRS Carrier's interconnection rights predate the 1996 amendments to the federal Act.

CMRS carriers have a right to reasonable and non-discriminatory interconnection with the ILECs that compete with them. Long before the 1996 federal Act authorized local competition by CLECs, the FCC allowed certain carriers to use radio frequency to provide common carrier "Land Mobile" communications services that competed with the telephone companies. In 1949 the FCC first allocated radio spectrum for mobile service.⁴⁵ It awarded half of the frequencies to AT&T and the other half to non-landline entities. These other entities – "radio common carriers" ("RCCs" and now "CMRS") – were the first real competitors to the Bell System and independent LECs. The telcos have tried to kill the competition ever since by refusing to accept and acknowledge the right of these pioneering competitors to interconnect to the PSTN as peers, and provide service within ILEC territory. CLECs – which showed up 47 years later – are "johnny-come-latelies" to communications competition and ILEC discrimination.

⁴³ Hng Tr pp 855-58 See also FX Docket Revised Award, *supra*.

⁴⁴ For example, note 16 to the Order cites two cases to support the proposition that physical location is determinative for retail rating purposes. ASAP must observe that neither of these cases involved wireless, but more important these were carrier compensation cases that had nothing to do with retail rating ASAP also notes that ¶ 37 of the *ISP Remand Order* does not say what the Order claims it does.

⁴⁵ *Gen. Mobile Radio Serv*, 13 F.C.C. 1190, 1212, *recon. denied*, 13 FCC 1242 (1949)

The FCC has consistently maintained and enforced its procompetitive policy. In 1976 and then again in 1980, RCC (now CMRS) rights to interconnection and local numbers were reaffirmed.⁴⁶ When it began to issue cellular telephone licenses in the early 1980s, the FCC allocated two licenses for every service area, prohibited any licensee from owning a significant interest in both licenses, and thereafter encouraged the development of other radio technologies capable of providing directly competitive services. More important, it required all landline telephone companies to provide unaffiliated mobile concerns (including paging companies) with interconnection that was equal in type, quality, and price to that enjoyed by wireless affiliates of wireline telcos.⁴⁷ In 1983 the FCC again refused to let the telcos treat RCCs like end users,⁴⁸ but instead required co-carriage rights: "RCCs are not end users except to the extent that they use exchange facilities for administrative purposes." "[RCCs] are not and should not be treated as interexchange carriers under Part 69."⁴⁹ In 1986 (10 years before the 1996 Act), the FCC once again reaffirmed this basic principle:

12. We believe that the Commission's interconnection requirements respecting paging, conventional mobile service, and cellular are well established. Part 22 licensees are common carriers generally engaged in the provision of local exchange telecommunications in conjunction with the local telephone companies and are therefore "co-carriers" with the telephone companies. They are entitled to reasonable interconnection for the services they provide.⁵⁰

⁴⁶ See, *Interconnection Between Wireline Telephone Carriers and Radio Common Carriers Engaged in the Provision of Domestic Public Land Mobile Radio Service Under Part 21 of the Commission's Rules (Domestic Public Land Mobile Radio Service)*, 63 FCC 2d 87, 88, 1977 WL 38679 (F.C.C.) (1977); *Interconnection Between Wireline Telephone Carriers and Radio Common Carriers Engaged in the Provision of Domestic Public Land Mobile Radio Service under Part 22 of the Commission's Rules (Memorandum of Understanding)*, 80 FCC 2d 352, 1980 WL 121568 (F.C.C.) (1980). These decisions expressly recognized that RCCs are co-carriers, not customers; that they have a right to and need for 7-digit local numbers and reasonable interconnection methods.

⁴⁷ See, e.g., *An Inquiry into the Use of Bands 825-845 MHz & 870-890 MHz for Cellular Communications Systems*, 86 F.C.C.2d 469, 495-496 (1981), *Amendment of Part 21 of the Commission's Rules with Respect to the 150.8-162 Mc/s Band to Allocate Presently Unassignable Spectrum to the Domestic Public Land Mobile Radio Service by Adjustment of Certain of the Band Edges*, 12 F.C.C.2d 841, 849-850 (1968), *aff'd, sub nom. Radio Relay Corp. v. FCC*, 409 F.2d 322 (2nd Cir. 1969).

⁴⁸ The PUC's holding in FOF No. 20A and Conclusion of Law No. 29. that ASAP is the "called customer" is also wholly inconsistent with the FCC's legal determination in *TSR* that paging companies perform "call termination" under § 251(b)(5) of the Act and as defined in 47 CFR § 51.701(d). In ¶ 22 the FCC observed that "A paging terminal performs a termination function because it receives calls that originate on the LEC's network and transmits the calls from its terminal to the pager of the called party. This is the equivalent of what an end office switch does when it transmits a call to the telephone of the called party." Paragraph 23 directly overrules the ILECs' claim that paging companies do not terminate calls to customers: "We similarly reject Defendants argument that paging carriers do not truly provide a call termination function because the paging terminal does not establish a direct communication path between the originating caller and the paging customer." The called customer is the paging customer, not ASAP. The PUC's similar holding with regard to ASAP's ISP customers cannot be reconciled with the FCC's decision in the *ISP Remand Order* that the ILEC and competitive carriers are engaged in joint provision of interstate access to the ISP, the customer.

⁴⁹ *Access Charge Second Reconsideration Order*, *supra* at 882.

⁵⁰ *In the Matter of The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, ¶ 12, FCC 86-85 LEXSEE 59 Rad. Reg. 2d (P&F) 1275 (Rel. Mar. 5, 1986) ("FCC Policy Statement") (Emphasis added, internal citations omitted).

The FCC also issued a policy statement in the 1986 decision Paragraph 2 of the policy statement provided:

2. The Commission's general interconnection policy for cellular systems, as set forth in that rulemaking, is that telephone companies are required to provide (a) a form of interconnection to a non-wireline carrier no less favorable than that used by the wireline cellular carrier and (b) a form of interconnection that is reasonable for the particular cellular system, to be negotiated by the cellular carrier and the wireline telephone company. 89 FCC 2d at 81-82; 86 FCC 2d at 495-96. A non-wireline cellular carrier is specifically given the right to request interconnection that may not be the same as that used by the wireline cellular carrier, and may not be "locked into the specific interconnection arrangements requested by a wireline carrier." 89 FCC 2d at 82. The cellular carrier is entitled to reasonable interconnection, the form of which depends upon the cellular system design and other factors: in some cases the interconnection of a cellular system as an end office (Type 2)⁵¹ may be most appropriate, and in others, interconnection as a PBX (Type 1) may be best. 86 FCC 2d at 496. A cellular system operator is a common carrier, rather than a customer or end user, and as such is entitled to interconnection arrangements that "minimize unnecessary duplication of switching facilities and the associated costs to the ultimate consumer." Underlying these policies was the goal of interconnection arrangements most favorable to the end user.⁵²

CMRS interconnection cannot be driven by ILEC dictates. Rather, the only factors that can be considered are system design to support the CMRS services in issue, cost to the consumer and avoidance of redundant facilities. The Order violates each of those principles, and treats ASAP like an end user by ignoring the fact that CenturyTel's end users are not calling ASAP but are instead calling ASAP's customer. When the Commission decides to look to ASAP's switch location for call rating purposes, it is treating ASAP like the called party and an end user "customer."⁵³ ASAP's customer is the called party. The Order deprives ASAP, ASAP's customers and the wireline customers that call ASAP's customers of federal rights that are older than this Commission.

⁵¹ ASAP interconnects with the PSTN "as an end office" via Type 2.

⁵² Although the policy statement expressly spoke only to "cellular" the FCC later clarified that the statement also applied to all RCCs and Part 22 licensees, including paging. Memorandum Opinion and Order, *In the Matter of The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services (Cellular Interconnection Proceeding)*, ¶ 43 FCC 89-60, 4 FCC Rcd 2369 1989 FCC LEXIS 540, 66 Rad. Reg. 2d (P & F) 105 (Rel. Mar. 1989).

⁵³ FOF 29 expressly states that with regard to paging calls, ASAP is the "called customer." As a matter of law, ASAP is *not* a "customer", it is CenturyTel's co-carrier and a peer.

B. CMRS carriers have the right to local numbering resources and have no obligation to assign numbers that correspond to the physical location of the CMRS customer.

Interconnection is only one of several important aspects of wireline-wireless calling. CMRS carriers also need E.164⁵⁴ addresses to connect to the wired world. The FCC has recognized this for a long time as well. Before numbering authority was delegated to a neutral third party, the FCC required ILECs to provide local numbers to CMRS carriers in general and paging companies in particular. The Federal commission has always recognized that CMRS operators need local numbers so that the persons who call CMRS users (wherever they may be at any given time) will not incur toll charges. This is so despite the fact that it has always been self evident that a paging operator will never know the precise physical location of its customer, the called party. Still, paging companies are entitled to local numbering resources in order to provide for local retail rating. For example, in the *NRO NPRM*⁵⁵ the FCC observed:

111. Rate centers are telephone company-designated geographic locations which are assigned vertical and horizontal coordinates within an area code. (n171 set out below) Historically, telephone numbers are assigned on an NXX code basis, and associated with a particular switch. For call rating purposes, each switch is associated with a particular rate center. For most carrier billing systems, the rate centers associated with the switches serving the calling and called parties are used to determine whether a call is local or toll and to compute the air mile distance for rating the toll call. (n172 omitted) Thus, most carrier billing systems rely on NPA-NXX code information for rating calls.

112. Because it is typically necessary for each facilities-based service provider to be assigned an NXX code for each rate center in which it provides service, the rate center structure places a great strain on numbering resources. (n173 set out below) Moreover, although wireless carriers offer larger calling areas and thus require fewer NXX codes for the wireless service, they often must request as many NXX codes as are required to permit wireless customers to be called by wireline customers on a local basis. (n174 set out below) (Emphasis added)

Footnotes 171, 173, and 174 provide additional explanation:

n171 NEWTON'S TELECOM DICTIONARY, 14th Edition, at 591. See also Local Exchange Routing Guide (LERG), Volume 2, Section 1 at 24 (March 1997). Incumbent local exchange carriers (ILECs) chose to establish the rate center structure as part of their network design for billing and pricing functions and no regulatory mandate requires its existence.

n173 Numbering assignment guidelines for companies choosing to perform call rating consistent with the traditional ILEC rate center configuration require the assignment of one NXX code per rate center.

⁵⁴ E 164 is the international standard for numbering plans to map phone numbers to phone lines. See, Newton's Telecom Dictionary, 17th Ed. The North American Numbering Plan follows E.164.

⁵⁵ *NRO NPRM*, *supra*.

n174 NANC Report at 1.5.2; Nextel comments at 10. Wireless carriers, however, often require fewer NXX codes than wireline carriers because they have larger local service areas. Bell Atlantic Mobile comments at 12. We note that, to enable the rating of incoming wireline calls as local, wireless carriers typically associate NXXs with wireline rate centers that cover either the business or residence of end-users. (Emphasis added)

CMRS carriers need and deserve "local" numbers in specific ILEC rate centers so that landline customers can call CMRS customers without incurring toll charges. The FCC has therefore always allowed CMRS carriers to obtain and associate local numbers with wireline rate centers to allow CMRS customers to be called by wireline customers on a local (non-toll) basis. The CMRS customer gets to select the rate center from which it wishes to be reached on a "local" (non-toll) basis. Under federal law there can be no retail toll charge when an ILEC end user calls a CMRS carrier's NXX associated with or local to the originating wireline rate center.⁵⁶ This has been the law for over 50 years, even though it has always been obvious that paging companies do not know and have never known the physical location of their customers. The Order reverses more than 50 years of precedent.

CMRS carriers obtain NXXs and associate them with wireline rate centers for a single purpose: to obtain retail local rating for calls to those numbers from wireline customers in the local calling area of that rate center. The NXX has no other meaning to the CMRS provider.⁵⁷ There is no law or

⁵⁶ *TSR and Mountain* are not authority for the proposition that an ILEC can ever charge retail toll to its end users if the NXXs are associated with the same mandatory calling scope. Rather, they stand for the principle that the ILEC is entitled to recover inter-carrier compensation for any out-of-area transport costs – when the CMRS carrier prevents the ILEC from assessing toll because of the rate center assignment of the calling and called NXXs. See *Mountain Order on Review* ¶ 5: "By configuring its interconnection arrangement in this manner, Mountain prevents Qwest from charging its customers for what would ordinarily be toll calls to access Mountain's network." They also properly rule that ILECs can charge toll at retail for calls that are between different local calling scopes (based on NXX assignment) even though for wireline to wireless intercarrier compensation purposes the call is local. *Mountain* clearly recognized that it is the wireless carrier that controls ILEC retail rating based on the NXX rate center assignments. The ILEC is made whole on the wholesale carrier compensation side, if it must incur out-of-area transport cost. As the Commission has recognized, CenturyTel bears no such costs.

⁵⁷ See, e.g., Memorandum Opinion and Order, *In the Matter of Telephone Number Portability – Carrier Requests for Clarification of Wireless-Wireless Porting Issues*, CC Docket No. 95-116, FCC 03-237 ¶ 22 (Rel. Oct. 7, 2003) ["Because wireless service is spectrum-based and mobile in nature, wireless carriers do not utilize or depend on the wireline rate center structure to provide service: wireless licensing and service areas are typically much larger than wireline rate center boundaries, and wireless carriers typically charge their subscribers based on minutes of use rather than location or distance."]; Eighth Report, *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 02-379, FCC 03-150, ¶ 62 ["First, the defining aspect of mobile telephony is, of course, mobility... Second, wireless carriers have considerable discretion in how they assign telephone numbers across the rate centers in their operating areas. In other words, a mobile telephone subscriber can be assigned a phone number associated with a rate center that is a significant distance away from the subscriber's place of residence"] and n. 227 ["Once the NPA-NXX (i.e., 212-449) is assigned to the wireless carrier, the carrier may select any one of its NPA-NXXs when allocating that number to a particular subscriber. Therefore, with regard to wireless, the subscriber's physical location is not necessarily a requirement in determining the phone number assignment – which is very different from how wireline numbers are assigned"]

regulation that requires a CMRS provider to give a number within an NXX block only to CMRS customers who are physically located in the rate center to which the NXX is assigned.⁵⁸ If there were such a regulation, CMRS providers would be required to contractually bind their customers to turn off their mobile stations at the rate center boundary, or the CMRS provider would have to possess the ability to "auto-sense" when a customer stepped over the boundary and then immediately inform every ILEC in the rate center to start charging toll at retail for calls to that number. The rule espoused by the Order is silly and wrong. We are talking about mobile service:

2.3 Wireless NXX Assignments.

NXX codes that are assigned to wireless carriers are associated to a specific wireline rate center and are communicated via the LERG. These are assigned to wireline rate centers in order to accomplish land to mobile rating. However, once NPA-NXXs are assigned to a wireless carrier, wireless carriers may select any one of their NPA-NXXs when allocating numbers to a subscriber. The WSP may select a particular NPA-NXX value based on customer desires of calling areas for land to mobile calls, mobile to land calls, or a combination of both. Alternatively, a wireless carrier may choose to select an NPA-NXX value that is physically closest to the subscriber billing address. There are no state or federal requirements to associate an NPA-NXX for a new subscriber based on their residence, billing, or other location.⁵⁹

The Order takes away "local" calling to CMRS providers and leaves only "toll," in violation of federal law and precedent. The Order prevents ASAP from using its federally-assigned "local" numbering resources, in violation of § 251(e)(1) of the Act and the FCC's numbering rules, because the Order functionally changes the rate center assignments of ASAP's NXXs from Fentress, Kyle and Lockhart to Austin. The Order improperly focuses on the location of the wireless "called party" for retail rating purposes and then compounds the error by presuming that the call is going to ASAP's switch, even if the customer is in fact within the ELCS area. The Commission is looking at everything through wireline blinders. CMRS is mobile service; CMRS providers do not provide access lines, and they do not provide service to a customer "premise." Once the ILEC hands the call off to the CMRS carrier, the ILEC is totally cost indifferent to where the call ultimately goes.

The FCC has never required a CMRS provider to use an NXX only to provide service to a customer while that customer is physically located in the rate center to which the NXX is associated, in

⁵⁸ Even CenturyTel has recognized this point in its February 26, 2003 Comments to the FCC in Docket 95-116. [“(S)ince wireless telephone numbers are not assigned based on the physical service location of the end user, it is likely that the wireless end user will not be physically located within the rate center area.”]

⁵⁹ North American Numbering Council LNPA Working Group Report on Wireless Wireline Integration, p. 33 May 8, 1998 (NANC Report to FCC) available at <http://www.fcc.gov/wcb/tapd/Nanc/rptnancr.doc> (emphasis added). The NANC is a Federal Advisory Committee under 5 U.S.C. App. 2. NANC, like the FCC, clearly understands that retail rating is determined by the NXX rate center assignment and that a wireless carrier obtains an NXX and associates the NXX with a rate center for the sole purpose of arranging for local retail rating of wireline-wireless calls.

order to have local wireline-wireless calling. The FCC has never allowed an ILEC to impose toll on its users when they call a CMRS customer with a number that is associated with the same local calling area.⁶⁰ Instead, the FCC allows the ILEC to recover from the CMRS carrier any "out of local area" intercarrier transport costs incurred when the ILEC delivers calls to a switch or paging terminal. CenturyTel, however, does not incur any additional transport cost. CenturyTel merely routes – but does not transport – out of San Marcos when its users dial an ASAP number.⁶¹

The Order holds that ASAP's NXXs are not eligible for "ELCS treatment" because the physical location of the called party is not always within the ELCS area. This conclusion is incorrect, for two reasons. First, while there may be intercarrier compensation implications, the location of the called party has absolutely no relevance to the retail rating of a call.⁶² The PUC expressly so held in the *FX Docket*. This is especially so for wireline-wireless calls. Wireless carriers obtain NXXs for the sole purpose of securing local retail rating to or from a particular area, and they can (and routinely do) assign numbers in an NXX to customers that may never be physically located in the geographic area corresponding to the exchange or rate center. There is absolutely nothing wrong with that.

This Commission has recognized that CMRS carriers deserve to have similar local calling area access for retail rating purposes. It did so as a result of the fact that the "Grand Prairie rate center" had unique Extended Local Calling Areas characteristics in the 214 and 972 area codes. In Docket 18438 the Commission required ILECs to consolidate several rate centers in Dallas/Fort Worth and Houston. At the same time, the PUC ordered:

...the creation of a rate center in the 214 area code with the identical ELCS characteristics of the Grand Prairie rate center, to be used exclusively by wireless providers (e.g., cellular, paging and PCS providers). In turn, all wireless providers in the Dallas metropolitan areas shall obtain NXX codes only from the 214 NPA. This is intended to relieve the jeopardy situation that exists for the 972 NPA, while at the same time ensuring a ready supply of NXX codes for wireless providers.⁶³

If CMRS is not entitled to participate in extended local calling arrangements, and if the Commission had intended to limit "eligibility" to participate in extended local calling arrangements to only those CMRS customers that were physically present in the extended area at the time of the call, it is certainly not evident from the Order in Project No. 18438. Indeed, the "Texas Number Conservation

⁶⁰ In fact, the FCC's dialing parity rule expressly prohibits ILECs from requiring additional digits when an ILEC end user calls a paging company NXX that is "local."

⁶¹ FOF Nos. 49, 50

⁶² This is true both for wireline-wireline calls and wireline to wireless calls.

⁶³ Project No. 18438, *Number Conservation Measures in Texas*, Order No. 1, ¶ 18 (June, 1998)

Task Force Report,” which was adopted in large part by Order No. 1 in that Project, detailed several of the points emphasized in this Motion for Rehearing. For example, the Task Force Report expressly notes that:

- ✍ Competitive carriers’ switches provide service over a larger area than ILEC switches.⁶⁴
- ✍ Retail call rating is an automated process based on the rate center association of the calling and called NXXs.⁶⁵
- ✍ Retail rating for wireline to wireless calling depends on the rate center assignment of the CMRS provider’s NXX.⁶⁶

The Order wrongly focuses on the physical location of the called wireless party for purposes of retail rating as opposed to intercarrier compensation. **This principle, if adopted, logically equally applies to all CMRS carriers, including cell and PCS.** Under the Order, the retail rating of any given wireline to wireless call (Cell/PCS and paging) depends on whether the CMRS customer is physically within or without that local calling area at the time of the call. Alternatively, it will depend on the CMRS switch location. Wrong on both counts.

The Order next decides that since paging customers cannot be located when they receive individual pages, ASAP’s switch and paging terminal will be used as a proxy for the customer location. This turns ASAP’s Kyle, Lockhart and Fentress NXXs into Austin NXXs. ASAP clearly has the right to obtain NXXs in the Kyle, Fentress and Lockhart rate centers, since it has spectrum authorizations, customers and facilities there. Given this fact, neither CenturyTel nor this Commission can overturn or ignore ASAP’s Kyle, Fentress and Lockhart assignments by “deeming” those NXXs to be rate centered in Austin.

Once must wonder what the rule will be when a SWBT Lockhart customer calls an ASAP Lockhart NXX. Will that be a Lockhart “local” call, or a toll call between Lockhart and Austin? What is the rule when a SWBT Austin customer calls an ASAP Lockhart number – is that a local call “within” Austin or is it instead a toll call between Austin and Lockhart?⁶⁷ Or, as is likely, will calls from CenturyTel’s San Marcos users to the Lockhart NXX be toll at the same time that calls from SBC’s Austin users to ASAP’s Lockhart NXXs will be toll? Such a result would be purely arbitrary and capricious. It cannot stand. The Order completely and unlawfully unravels the NXX rate center assignment rules and processes and the resulting retail rating.

⁶⁴ Task Force Report, p. 1

⁶⁵ Task Force Report, pp. 7, 84, 85

⁶⁶ Task Force Report, pp. 24, 26, 28, 32, 34, 38.

⁶⁷ SBC and Verizon are both at present properly honoring ASAP’s rate center assignments, including those within “ELCS” areas.

C. The Order wrongly equates CMRS to the wireline network, violates ASAP's CMRS rights to Type 2 Interconnection, and denies use of the "local" numbers assigned to ASAP by NANPA.

Under the Order, the only way that ASAP can achieve local retail rating from San Marcos is to place a switch or paging terminal in Kyle, Fentress and Lockhart. Alternatively, ASAP could obtain a San Marcos NXX (thereby contributing to number exhaust when the NXX is otherwise unnecessary) and place a switch or paging terminal in San Marcos.⁶⁸ This is wholly unreasonable. First, it requires additional investment and cost for switches that are not needed for any technical reason. Second, it is required solely to meet CenturyTel's wireline-centric view of the world, and allows CenturyTel to dictate the form of interconnection between CenturyTel and ASAP. Finally, it destroys CMRS carriers' right to Type 2 interconnection at the LATA tandem and thereby obtain access to all end offices and other tandems that are connected to the LATA tandem.

1. The Order imposes unnecessary and unlawful costs on ASAP and CenturyTel's end users.

A cellular system operator is a common carrier, rather than a customer or end user, and as such is entitled to interconnection arrangements that "minimize unnecessary duplication of switching facilities and the associated costs to the ultimate consumer." Underlying these policies was the goal of interconnection arrangements most favorable to the end user.⁶⁹

The Order requires ASAP to locate a switch or paging terminal in every rate center where it has an NXX in order to obtain retail-rated local calling.⁷⁰ This is not necessary for any technological reason; it is completely based on the Order's misguided belief that wireless carriers' rights must somehow be judged based on their relationship to the wireline network. Obviously, there is a significant cost to such a major redesign of a carrier's network and the purchase and placement of many switches.⁷¹ This clearly and obviously violates the FCC's ruling that a CMRS carrier is entitled to interconnection that minimizes unnecessary duplication of switching facilities. If ASAP chooses to not install all of these switches, then CenturyTel's end users will pay toll under the Order. This is not

⁶⁸ ASAP predicts that CenturyTel would still refuse to retail rate such calls based on some excuse not addressed by the Order.

⁶⁹ *FCC Policy Statement, supra*. As noted, the FCC clarified that the policy statement applied to all RCCs and Part 22 licensees, including paging in ¶ 43 of the *Cellular Interconnection Proceeding*.

⁷⁰ The only other alternative would be to obtain Type 1 interconnection in an ILEC end office in each desired local calling area. Type 1 interconnection is addressed below.

⁷¹ ASAP has 13 NXXs in the Austin LATA, two of which are associated with the Austin rate center. *See* CenturyTel Exh. 5, Novak Deposition Exh. 2. The Order requires ASAP to place eleven more switches in the Austin LATA if it wants to secure retail rated local calling from ILEC end users in the rate centers and associated local calling areas with which the eleven non-Austin NXXs are associated. There is absolutely no technical reason for such a requirement. It all stems from a misguided wireline-centric perspective.